IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.1034 OF 1998
IN
SUMMONS FOR JUDGMENT NO.178 OF 1997
IN
SUMMARY SUIT NO.2940 OF 1995

Ravi Gupta. ...Appellant.

Vs.

Bajaj Auto Ltd & Anr. ...Respondents.

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Shri D. H. Mehta, Senior Advocate i/b. Shri S.P. Kanuga for the appellant.
None for the respondents.

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**CORAM : R. M. S.KHANDEPARKAR &**
**DR.D.Y.CHANDRACHUD, JJ.**

**January 25, 2007.**

**P.C.**

Heard the learned Advocate for the appellant. None present for the Respondents though served.

2. This appeal arises out of the order dated 27th July 1998 passed by in Summons for Judgment No.178 of 1997 in the Summary Suit granting conditional leave to the defendants on depositing a sum of Rs.20 lakhs within the period specified thereunder.

3. The main grievance of the appellant is that the impugned order nowhere discloses any justification for ordering deposit of Rs.20 lakhs being condition precedent for the grant of leave to defend the suit filed by the Respondent No.1 and to that extent, the impugned order is non-speaking order.

4. The respondent No.1 has filed a Summary Suit for a decree in the sum of Rs.59,76,520/- (an ex-parte decree was passed in the said suit). As far as Defendant No.1 is concerned, there was an ex-parte decree passed by the Learned Single Judge. As far as Defendant No.2 is concerned, he has filed affidavit in reply to the Summons for Judgment and the application in that regard discloses various grounds in support of his claim for unconditional leave to defend the suit. The Learned Single Judge, however, without considering any of those grounds ascertaining whether there is a case made out by Defendant No.2 to defend the suit unconditionally, directed the appellant-Defendant No.2 to deposit a sum of Rs.20 lakhs as a condition precedent to enable him to defend the suit. Indeed, the impugned order nowhere discloses any discussion regarding the case put forth by the appellant in support of his claim to defend the suit unconditionally.

It merely states that in view of the Learned Single Judge the appellant should be directed to deposit a substantial amount claimed by the Plaintiff and that therefore, the conditional leave is required to be granted. It is well settled that while dealing with the application by the defendant to seek leave to defend in Summary Suit, the Court has to consider the ground disclosed by the applicant-defendant in support of his claim for defending the suit unconditionally and on analysis thereof, the Court has to arrive at a finding whether the concerned party is entitled to defend the suit unconditionally and without depositing any amount claimed or otherwise. Since the impugned order does not disclose any such exercise having been done by the Learned Single Judge, on that ground itself, the impugned order is liable to be set aside as the impugned order as rightly submitted by the learned Advocate for the appellant is a non-speaking order. On this ground itself, therefore, the impugned order is set aside and the matter is remanded to the Learned Single Judge to deal with Summons for Judgment No.178 of 1997 after taking into consideration the case put forth by Defendant No.2 and to dispose of the same in accordance with law. Needless to say that the parties are at liberty to move for expeditious disposal of the said Summons for

Judgment in view of the fact that it is of the year 1997.

5. The appeal is accordingly disposed of with no order as to costs.

( R. M. S.KHANDEPARKAR, J.)

( DR.D. Y. CHANDRACHUD, J.)